

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<u>UNITED STATES OF AMERICA</u>	)	Criminal No. 05-40006- FDS
	)	
	)	
V.	)	
	)	
	)	
<u>HERIBERT RODRIGUEZ</u>	)	

MOTION TO WITHDRAW AS COUNSEL FOR THE DEFENDANT

Now comes Walter H. Underhill, Esquire and moves that this Honorable Court allow him to withdraw as counsel for the defendant Heriberto Rodriguez.

In support of this motion the defendant's appointed counsel states as follows:

1. Present counsel was appointed to represent the defendant on March 25, 2005.
2. Counsel has represented the defendant since that time and has conducted automatic discovery, conferences with the Government in this case and status conferences with the Court.
3. Discovery has been provided to the defendant and thoroughly reviewed by both defense counsel and by the defendant with defense counsel.
4. A pre-trial motion to conduct a Pre-Plea Pre-Sentence report has been filed with the defendant's knowledge and consent, and on August 4, 2005 [the Court ordered the Probation Department to prepare and disclose to the parties a criminal history of the defendant, in the same form ordinarily used in connection with a Pre-Sentence report.](#) This motion was filed in order to determine whether the defendant's criminal record, in light of recent case law, qualifies him as an Armed Career Offender pursuant to 18 U.S.C. 924 (e) (1).
5. Recent orders have issued on August 22, 2005 to Ayer, Fitchburg and Worcester District Courts for certified copies of the defendant's juvenile record in order to compile a criminal history of the defendant in compliance with the Court's Orders.
6. On August 26, 2005, defense counsel was served notice electronically with a letter to the court complaining of counsel's performance on his behalf. Counsel,

sensitive to not prejudicing the client before the court and whose attorney-client relationship with the defendant has been otherwise cordial and without acrimony, does not wish to address these issues any further in this motion.

7. On Sunday, August 28, 2005, counsel traveled from Andover, Massachusetts to the Wyatt Detention Center in Central Falls, Rhode Island to visit with the defendant in order to discuss his complaints and attempt to resolve any misunderstandings or differences between counsel and the defendant. The defendant refused to meet with counsel at that time. Since counsel's attempt to meet with the defendant, there has been no other communication between counsel and the defendant.
8. In light of the defendant's unwillingness to communicate with counsel relative to his case, counsel is left with no other choice but to request this Court to allow him to withdraw from the defendant's representation.

The defendant,  
HERIBERTO RODRIGUEZ  
By his attorney,

‘/s/Walter H. Underhill, Esquire’  
Walter H. Underhill, Esq.  
66 Long Wharf  
Boston, MA  
02110  
4<sup>th</sup>. Floor  
Tel. # 617-523-5858  
B.B.O. # 506300

DATE: August 28, 2005

#### RULE 7.1 CERTIFICATION

The parties have not had an opportunity to confer on this motion.

SIGNED : ‘/s/Walter H. Underhill, Esquire’

DATE: August 28, 2005